

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR**

..

:: JUDGMENT ::

Oriental Insurance
Company Ltd.

Vs.

Rangeel Singh & ors.

S.B.CIVIL MISC. APPEAL NO.367/1992.

Against the award dated 14.07.1992
made by the Motor Accidents Claims
Tribunal, Doongarpur in Claim Case
No.22/1984.

Date of Judgment

::

18th August, 2006

PRESENT

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr. Varun Gupta, for the appellants.

Mr. K.C. Sharma, for the claimant-respondents.

BY THE COURT:

The insurer of offending vehicle involved in fatal accident seeks to question the award made by the Motor Accidents Claims Tribunal, Doongarpur on 14.07.1992 in Claim Case No.22/1984 only on the ground that the claimant had filed an application and obtained compensation from Workmen's Compensation Commissioner and, therefore, the claim application before the Tribunal was not competent. It is on this contention only that this appeal was admitted on 19.10.1992 while noticing thus,-

"Learned counsel for the appellant submits that with respect to the same accident, the petitioner filed an application before the Commissioner, Workmen Compensation, Jammu & Kashmir, and an Award was passed in his favour. The claimant with respect to the same accident has filed the present claim petition which has, also, been decreed by the learned Judge of the Motor Accident Claims Tribunal, Doongarpur. According to learned counsel for the appellant the present claim petition is not maintainable and Section 110-AA would operate as a bar for the maintenance of the claim petition. In support of his contention, he has placed reliance over the judgment of Allahabad High Court, reported in 1989 A.C.J. 94 (Sarla Devi and other Versus Jhangi Ram).
Admit.
Issue notice."

Background facts are that the claim application was submitted by Rangeel Singh joining his son Jogendra Singh and daughters Jasbir Kaur, Surjeet Kaur, Kuldeep Kaur, Paramjeet Kaur and Charanjeet Kaur as claimants seeking compensation on account of accidental death of Indrajeet Singh, son of claimant No.1 and brother of claimant Nos. 2 to 7, who was working as driver on a truck bearing registration No. JKQ 8875. The claimants averred that on 04.01.1984 at about 3.00 p.m. the deceased Indrajeet Singh while alighting from his truck after parking it on its side on kuchcha road, was hit from behind by the offending truck bearing registration No. RRY 225 and he died for the injuries sustained in the accident. Stating his age at 22 years and

income at Rs.1,000/- per month, the claimants made a claim for compensation in the sum of Rs.8,66,000/- against the driver, owner and insurer of the offending truck RRY 225. The non-applicant Nos.1 and 2, driver and owner of the truck, while denying the accident to have occurred for rash and negligent driving of the truck in question, submitted that the liability for compensation, if any, was that of the insurer. The insurer, non-applicant No.3 while stating a general denial of the claim averments and alleging the accident to have occurred not for the fault of the truck insured by them, submitted that the claimant Nos.1 and 2 were not dependent on the income of the deceased; that the claimant Nos.2 to 7 were claiming compensation on account of death of their brother but they were not answering to the description of legal representatives and dependents within the meaning of Section 1A of the Fatal Accidents Act; and that the owner and insurer of the truck JKQ 8875 were also necessary parties to the claim application.

Noteworthy it is that after filing of reply by the non-applicants and at the time of framing of issues on 01.05.1986, the Tribunal while upholding the objection raised by the insurer about incompetence of claim application by the brother and sisters of the deceased ordered that the names of such

claimant Nos.2 to 7 be deleted from the array of parties; and thereafter framed the following issues:-

“(1) आया विपक्षी संख्या-1 द्वारा ट्रक संख्या आर.आर.वाड़. 225 को दि. 4.1.84 को खैरवाडा से रतनपुर के राष्ट्रीय राजमार्ग पर तेजी, गफलत व लापरवाही से चलाकर बिछीवाडा से 100 मीटर के दूरी पर कच्ची सड़क पर खड़े ट्रक जे.के.क्यू. 8875 को सांय 3 बजे टक्कर मारकर उसके ड्रायवर इंद्रजीत सिंह की मृत्यु कारित की.

--प्रार्थी

(2) आया दुर्घटना के समय मृतक इंद्रजीतसिंह की आयु 22 वर्ष की थी और वह 1000/- रूपए मासिक वेतन के रूप में भत्तों के अलावा प्राप्त करता था. यदि ऐसा है तो क्या प्रार्थी संख्या-1 प्रार्थना पत्र के चरण संख्या 11 में उल्लिखित प्रकार से कुल रूपए 8,66,000/- प्रतिकर के रूप में विपक्षीगण से व्यक्तिगत रूप से तथा सामूहिक रूप से प्राप्त के अधिकारी हैं.

--प्रा.

(3) आया दुर्घटना स्वयं मृतक इंद्रजीतसिंह की लापरवाही से घटित हुयी और ट्रक संख्या जे.के.क्यू. 8875 के स्वामी व आगोपक को पक्षकार नहीं बनाये जाने से यह प्रार्थना पत्र असंयोजन के दोष से दूषित है.

-विपक्षीगण.

(4) अनुतोष."

After evidence, learned Judge of the Tribunal decided issue No.1 in favour of the claimant and held that the accident resulting in death of Indrajeet Singh was caused by rash and negligent driving of the truck RRY 225 and as a consequence issue No.3 was also decided against the non-applicants that there was no necessity of impleading the owner and insurer of the other truck.

Taking up quantification of compensation and liability and entitlement thereto in issue No.2, learned Judge estimated the loss of dependency at Rs.400/- per month and the age of the deceased at 25 years and then applying a multiplier of 25 estimated the pecuniary loss at Rs.1,20,000/-; and added Rs.10,000/- towards non-pecuniary loss and then from the estimated loss of Rs.1,30,000/- deducted Rs.26,000/- on account of lump sum payment and found justified the compensation in the sum of Rs.1,04,000/-. Learned Judge referred to the fact that some sisters of the deceased received Rs.19,200/- from the Workmen's Compensation Commissioner, Jammu ('WC Commissioner' herein) and considered it appropriate to deduct this amount of Rs.19,200/- from the compensation amount of Rs.1,04,000/- and then observed that claimant No.1 Rangeel Singh was entitled to receive this amount of Rs.84,800/- for himself and non-applicants (this reference is obviously to the applicants) Nos.2 to 7, they being heirs of Class-II under Section 8 of the Hindu Succession Act as there was no heir of Class-I; and thereafter noted the fact that they were ordered to be deleted on 01.05.1986.

On the question of relief in issue No.4 it was suggested on behalf of the insurer that the claim application was not competent for the compensation having been received from

WC Commissioner; however, learned Judge rejected such contention with reference to the fact that the claimant Rangeel Singh has not adopted any proceedings under the Workmen's Compensation Act and the amount of compensation has been paid to Jasbir Kaur on 01.08.1985 whereas Rangeel Singh had already moved claim application under the Motor Vehicles Act before the Tribunal on 03.07.1984. Learned Judge though rejected the contention about incompetence of the claim application but then considered it proper to deny pendente lite interest. Accordingly, the Tribunal made the award in the sum of Rs.84,800/- and allowed Rs.500/- towards costs but did not allow any interest with the stipulation that if the amount would not be deposited within a month, then the claimant would be entitled to interest at the rate of 20% per annum from the date of award i.e. 14.07.1992.

The insurer has questioned the competence of claim application and this appeal was admitted on 19.10.1992 on the contention as noticed hereinbefore. Learned counsel Mr. Varun Gupta appearing for the appellant has strenuously contended with reference to Section 110AA of the Motor Vehicles Act, 1939 that a claim application for death or bodily injury could be maintained either before the Workmen's Compensation Commissioner or before the Motor Accidents

Claims Tribunal but not both; and in the present case, the claimants having obtained compensation from WC Commissioner attempted to seek compensation from the Tribunal that amounts to playing fraud and submitted with reference to a decision of Andhra Pradesh High Court in Pattam Abdullah Khan Vs. T.Venkatarami Reddy & anr. : II (2004) ACC 737 that application was liable to be rejected.

Learned counsel appearing for the claimants has strenuously opposed with the submissions that the appeal is based on factually incorrect grounds. The claimant, Rangeel Singh, father of the deceased, never sought any compensation from WC Commissioner and there was no 'widow of the deceased' as asserted in the present memo of appeal. Learned counsel submitted that the claim application had already been filed before the Motor Accidents Claims Tribunal and if thereafter sisters of the deceased had received any compensation from WC Commissioner that was of no effect on the competence of the present claim application and the Tribunal has rightly allowed the same.

Having given a thoughtful consideration to the submission made by the learned counsel for the parties and having examined the record, this court is satisfied that this appeal remains totally bereft of substance and deserves to be dismissed with costs.

It is to be imbibed that this objection against competence of motor accident claim application with reference to Section 110AA of the Act of 1939 is sought to be asserted not by any person liable for compensation under the Workmen's Compensation Act; but only by insurer of the offending truck, representing only a third-party tortfeasor's liability. The Tribunal has categorically found the accidental death of Indrajeet Singh being the result of negligence of the driver of the truck insured by the appellant. The appellant, insurer of offending truck RRY 225, does not even appear justified in raising this objection. Moreover, even if permitted to be raised by the appellant, this objection turns out to be totally meritless on facts as well as in law.

The fact that the deceased Inderjeet Singh was a bachelor remains indisputable. He has been found working as second driver on the truck he was riding at the time of accident. The claim for compensation was of course initially made on behalf of the father, brother and sisters of the deceased but the brother and sisters of the deceased, being claimants Nos. 2 to 7 were specifically ordered to be deleted from the array of parties by the Tribunal by its order dated 01.05.1986 as noticed hereinbefore. There being no heir of the deceased as specified in class I of the Schedule to the Hindu

Succession Act, the father remained the heir of Entry I in class II; and in the presence of the father, the brother and sisters of the deceased were not falling in the status of legal heir of the deceased and were not entitled to claim compensation as such unless a clear case of dependency was made out. The Tribunal while passing the order dated 01.05.1986 noticed this position of legal status of the claimants and upholding the objection of the insurer deleted the sisters and brother from the array of parties.

It is not the allegation that the father of the deceased ever sought any compensation in any other forum or before any other authority; and this court is clearly of opinion that there was no impediment in the competence of the claim application filed by the father. Yet, in the balance of equities, the Tribunal has proceeded to deduct the amount received by the sisters of the deceased from the WC Commissioner from out of the compensation awarded herein.

In fact the award of compensation made by the Tribunal in this case in the sum of Rs. 84,000/- is too much on the lower side when the Tribunal has not only deducted the aforesaid amount of Rs. 19,200/- received by the sisters of the deceased, but has also deducted 20% of the assessed loss with reference to 'lump sum payment'. Such deduction on lump sum payment in the facts of the present case was

absolutely unjustified. Yet further, the Tribunal proceeded to deprive the claimant of interest on the award amount for all the years of pendency of claim application for no rhyme or reason. Be that as it may, as no prayer for enhancement has been made, quantum of compensation is not been further dilated upon, but it remains a fact that the father of the deceased, being the heir of Entry I of Class II of the Schedule to the Hindu Succession Act, was entitled to maintain the claim application before the tribunal, and even if any compensation was obtained by the sisters of the deceased from the WC Commissioner after filing of the present claim application, such compensation payment cannot operate adverse on the competence and maintainability of the present claim application by the father of the deceased.

Section 110AA of the Motor Vehicles Act, 1939 provided thus:

"110-AA. Option regarding claims for compensation in certain cases.- Notwithstanding anything contained in the Workmen's Compensation Act, 1923, where the death of or bodily injury to any person gives rise to a claim for compensation under this Act and also under the Workmen's Compensation Act, 1923, the person entitled to compensation may claim such compensation under either of those Act but not under both."

Obviously, such bar could operate on the person entitled to claim compensation; and unless the claimant Rangeel Singh, the 'entitled claimant', was shown to have made any claim before WC Commissioner, competence of the present claim application could not have been questioned; and such objection has rightly been rejected. The decision in P.Abdullah Khan, where the injured-claimant himself while suppressing the fact of filing motor accident claim application moved for compensation before WC Commissioner also and played fraud, has absolutely no relevance to the facts of the present case.

That the appellant has submitted this appeal on entirely baseless premise is apparent from the grounds taken in the present memo of appeal. It was nobody's case anytime that the deceased was married a person or that Jasbir Kaur was his wife. In fact Jasbir Kaur was the sister of the deceased regarding whom it was contended before the Tribunal that she, joining two other sisters, obtained compensation from the WC Commissioner, Jammu. However, the appellant has chosen to take the ground in the present memo of appeal that the 'widow' of the deceased obtained such compensation stating: 'it is admitted position that Jasbir Kaur respondent No. 3 who is none else then the widow of deceased has already claimed

and received compensation...'. Such assertion is not compatible with the correct facts of the case, as given out in the award and the claim application. Moreover, this appeal was admitted, as noticed at the outset, on the assertion on the part of the appellant that the 'claimant' got the award made in 'his' favour from the WC Commissioner. The assertion is incorrect on material fact inasmuch as the claimant, i.e. Rangeel Singh never made any claim before the WC Commissioner nor any award is shown to have been made in his favour.

It is apparent that the appellant has proceeded on fundamentally incorrect premise as if the rightful claimant obtained compensation from WC Commissioner and hence that were a curtain on this claim application. As noticed above, the right of the father of deceased in the present case to claim compensation was definitely preferential and superior to the right, if any, of the brother and sisters of the deceased, and he having not done anything even suggestive of his attempt to gain double advantage, the present claim application was not barred, whether under the statute or in equity. The Tribunal has although made the award only at pittance, but has rightly rejected the baseless objection against the competence of claim application. This appeal remains wholly devoid of substance.

The appellant, an insurer, has chosen to submit this appeal on baseless grounds and this appeal was admitted after noticing a contention that too turns out to be incorrect on a material fact. Consequent to admission of the appeal, this court denied the amount of award to the claimant though the appellant was directed to deposit the same by the order dated 19.10.1992; and even while modifying on 27.04.1998, this court permitted half of the amount of award to be paid to the claimant. In the circumstances of the case, the appeal deserves to be dismissed with quantified costs.

In the result, this appeal fails and is dismissed with costs quantified at Rs. 3,300/- payable by the appellant to the respondent No. 1 and to be deposited within thirty days with the Tribunal.

(DINESH MAHESHWARI), J.

MK